

**FLATHEAD COUNTY BOARD OF ADJUSTMENT
MINUTES OF THE MEETING
AUGUST 3, 2021**

**CALL TO ORDER
6:00 PM**

A meeting of the Flathead County Board of Adjustment was called to order at approximately 6:01 p.m. at the 2nd Floor Conference Room of the South Campus Building, 40 11th Street West, Suite 200, Kalispell, Montana. Board members present were Ole Netteberg, Gina Klempel, Tobias Liechti, and Roger Noble. Cal Dyck had an excused absence. Erik Mack represented the Flathead County Planning & Zoning Office.

There were 9 members of the public in attendance at the meeting and 6 members of public in attendance over Zoom.

**APPROVAL OF
MINUTES
6:00 PM**

Klempel motioned, seconded by Liechti, to approve the June 1, 2021 minutes as written.

The motion passed unanimously by quorum.

**PUBLIC COMMENT
(Public matters that are
within the jurisdiction of the
Board 2-3-103 M.C.A)
6:01 PM**

None

**EVERGREEN WATER
DISTRICT #1
(FPAE-21-01)
6:02 PM**

A request by Flathead County Water District #1 for an agency exemption on a parcel of land located in the Evergreen Zoning District. Cindy Murray, General Manager for the Evergreen Water & Sewer District gave notice to the Flathead County Board of Adjustment that they intend to purchase 1.134 acres of land for the construction of a construct two (2) drinking water wells and associated utility infrastructure in an area zoned SAG-10 (Suburban Agricultural), which is contrary to zoning regulations adopted by Flathead County. Pursuant to 76-2-402, MCA the board shall have no power to deny the proposed use but shall act only to allow a public forum for comment on the proposed use.

**PUBLIC COMMENT
6:03 PM**

None

BOARD DISCUSSION
6:03 PM

Noble gave a summary of the history behind the proposal and the well. There would not be much of an impact from the project as the land will remain unaltered, with the exception of a well house that will be put on the property. The condition of the property was not going to change.

**DISCLOSURE OF
BOARD CONFLICT**
6:04 PM

Noble asked if there were any members of the board had any conflict of interests for any of the items on the agenda. Liechti recused himself as he worked for the firm that would be representing the applicant on FCU-21-10.

**CEDAR POINTE, LLC
(FCU-21-10)**
6:05 PM

A request from APEC Engineering, Inc., on behalf of Cedar Pointe, LLC, for a conditional use permit for the placement of nine-unit multi-family dwellings (four duplexes and an existing mobile home) on a parcel located within the Evergreen Zoning District. The property is located at 426 Maple Drive and is currently in the process of a zone change from *R-1 (Suburban Residential)* to *RA-1 (Residential Apartment)*. The total acreage involved in the request is 1.37 acres.

STAFF REPORT
6:06 PM

Erik Mack reviewed the Staff Report FCU-21-10 for the board.

BOARD QUESTIONS
6:07 PM

Klempel asked if there were any updates from the Fire Department regarding if they were going to be removing two of the units. Mack clarified there would be 9 total units.

**APPLICANT
PRESENTATION**
6:08 PM

Tamara Tanberg APEC Engineering, 111 Legend Trail, represented the applicant. She did not have add. The applicant had done a considerable amount of work to get to this point. It had an ideal access to utilities, location, and density.

She addressed that there had been correspondence with the fire district, with whom the owner was working with regarding fire hydrants.

Noble asked if the zone change had been completed, in which Tanberg confirmed it had. Noble asked if the existing units were served by Evergreen Water & Sewer and Tanberg confirmed they were.

AGENCY COMMENTS
6:11 PM

There were no public agencies present to comment. Written comments received were reviewed during the staff presentation.

PUBLIC COMMENT
6:11 PM

Charles Lapp, 3230 Columbia Falls Stage Rd, was the primary applicant on the projected and stated that everything had been covered. He was working with Evergreen Fire Department and had worked with Andy Hyde in the past. The final proposal was that they would put in a fire hydrant, by the driveway on Maple Drive, to serve the community. They would use the existing services. The hookups to the main line would be kept in place but in the ground, from there on, they would put in meter pits and new piping. The sewer main was already there and going into the middle of the property.

STAFF REBUTTAL
6:13 PM

None

BOARD DISCUSSION
6:13 PM

None

**MAIN MOTION TO
ADOPT F.O.F.
(FCU-21-10)**
6:14 PM

Netteberg made a motion, seconded by Klempel, to accept Staff Report FCU-21-10 as Findings-of-Fact.

BOARD DISCUSSION
6:14 PM

None

**ROLL CALL TO ADOPT
F.O.F.
(FCU-21-10)**
6:14 PM

Motion passed unanimously on a roll call vote.

**MOTION TO APPROVE
(FCU-21-10)**
6:15 PM

Klempel made a motion, seconded by Netteberg, to approve FCU-21-10.

**ROLL CALL TO
APPROVE
(FCU-21-10)**
6:15 PM

Motion passed unanimously on a roll call vote.

**FOREST HILLS INC
(FZV-21-05)
6:16 PM**

A request from David Kauffman, on behalf of Forest Hills, Inc. for a variance to Section 3.07.040(4) of the Flathead County Zoning Regulations (FCZR), to the maximum structure height of 35 feet. The subject property is zoned *SAG-10* (*Suburban Agricultural*) and *SC* (*Scenic Corridor*) and is located at 4610 Highway 40 W, within the Rural Whitefish and Scenic Corridor Zoning Districts. The property contains approximately 240 acres

**STAFF REPORT
6:17 PM**

Erik Mack reviewed the Staff Report FZV-21-05 for the board.

**BOARD QUESTIONS
6:19 PM**

None

**APPLICANT
PRESENTATION
6:20 PM**

David Kauffman, 4610 Highway 40 W, was the applicant. He discussed the history behind the proposal. His sons had come up with the idea to develop a unique structure for people to stay in and experience Montana. They found the old plans for the ranger look out stations and felt it might be doable and wanted to explore the possibility. They dove through the zoning regulations and discussed their options with different county agencies and people. They decided to pursue an additional dwelling unit (ADU). He discussed the desired placement of the structure and surrounding landscape.

He also stated the structure would not be noticeable unless you were adjacent to it due to the contour of the land and the forest. They felt that asking for 45 feet height would not be detrimental to the neighbors.

**BOARD DISCUSSION
6:26 PM**

Netteberg asked if there were long range plans to build more units. Kauffman replied it would only be one unit. They wanted to keep it in the family and said the purpose was to have something unique that would provide a cash flow so that they could keep their property intact.

Netteberg asked how many acres they had. Kauffman said 239 acres. Noble pointed out that there were actually 3 tracts on the COS. This tract was about 239 acres, there was a 30 acre tract (with a residential structure on it), and another tract across the street that was 22 acres.

**PUBLIC COMMENT
6:29 PM**

Travis Kauffman, 4610 Highway 40 W, was the one spearheading the project. He discussed how they were sent in the direction to create an ADU and the reasons why they wanted to go with a variance. He discussed going through the regulations and finding section 3.3.02 which addressed fire lookout towers being unrestricted. He discussed the conundrum of either needing a variance so that

they did not need a conditional use permit (CUP) or not needing the variance but needing a CUP. The CUP was not guaranteed to be given to them but he understood that getting a variance was very difficult. They had applied for the variance without reading the part about a fire tower not having height restrictions as long as it was within setbacks.

David Ackroyd, 6103 Montera, was neither in opposition or support of the proposal, he just wanted to ask some questions about the project. It had originally been conveyed to him that this proposal entailed a large number of short term rental properties. He questioned, if the variance was approved, would it be applied to the whole property and would there be a possibility for someone to come in and develop it into multiple buildings for short term rentals. He was just asking for clarification.

Mack replied the variance was for one structure only and would only be for said structure. It would not open up the whole piece of property for development.

Jerry LaPrath, 195 Sapphire Court, spoke in opposition of the project. He thought it was a very creative project. He was in opposition to the height variance as his property bordered the proposal. He had an issue with the glass and glare from the windows. He was concerned about fire and first responders having the proper equipment to reach the structure. He felt granting of the variance would have an adverse impact for the neighbors.

Kristen Westlund, 5058 Whitefish Stage Rd, spoke in opposition to the proposal. She was concerned that there was no fire security and no reason they could not build the structure under the maximum 35 feet.

Heidi Brandt, 190 E Blanchard Lake Rd, spoke in opposition of the proposal. She questioned where the access would be and asked for clarification. She stated they were against variances in general as they set a precedent.

Mack said [access] was not a criteria for the review of a variance, so it was not something that he had looked into. It pertained to the short term rental application.

Noble said he would have the applicant answer that question.

Joan Vetter Ehrenberg, 744 Hidden Valley Dr, spoke in opposition of the application. Her concern was fire danger and fire suppression equipment only able to reach 28 feet. She was concerned there was no well and did not understand how issues would be mitigated. She wanted clarification on how long the access road in would be and was concerned that it would be a long road in for the fire department. She did not understand why it was being allowed on 240 acres.

STAFF REBUTTAL
6:46 PM

Mack stated the reason why it was not considered a fire tower was because the intent was to short term rent it. A fire tower could not be rented out; it had to be a dwelling unit in order to short term rent it. If they were building a dwelling unit, it had to be within the height restriction of 35'. If they wanted to build the structure and have someone, who was trained to look for fires and would man it, then they could build the structure without a variance.

Mack discussed that the reason why they were getting funneled by different planners to build an ADU was because that was what they were doing, they were building an ADU which they wanted to short term rent. It was not a fire tower because it had a living quarters and they were building with the intent to rent it out.

BOARD QUESTIONS
6:47 PM

Noble asked if a CUP would be needed if they were not renting it out. Mack said it would be an accessory structure and would be limited to the regulations of an ADU because it had been determined that it was not a fire tower.

APPLICANT REBUTTAL
6:48 PM

Dave Kauffman clarified that the planned access was off of Hwy 40, off the driveway. He said there was an existing access road that would go right up to the structure. They chose to use the existing road so they would not add confusion to Hwy 40 and they could monitor what was going on. The driveway would be approximately ½ mile in length.

Netteberg asked Kauffman to show him on the map where the access and the building would be located.

Kauffman addressed the concern regarding the glare off the windows. He appreciated that comment and said they would do their best to angle them so as to not encroach on their neighbors

Kauffman addressed the concern of fire trucks being able to service the structure. He said a fire truck's maximum height is 35 feet. They looked at utilizing a well to service the place and anticipated the septic. The structure would be close enough to the highway that they could run power out there.

He was available for questions.

Liechti asked if Kauffman had any rebuttal of the staff report and the negative findings. Kauffman did want to address those but first addressed that there were some people in the neighborhood that had treehouses and those too were unique structures that might have some issues with fire and service availability.

Travis Kauffman wanted to address the comments and concerns. He argued that the county could not predetermine their intent of the structure. He argued that the fire emergencies accessibility was invalid because they could build a 20' ADU structure. He addressed the concern of glare from the windows. They had

looked into the angles, the surrounding topography, and the data showed it would not be an issue for his neighbor.

Dave Kauffman and Travis Kauffman spoke at length to the findings-of-fact and stated the reasons why they felt their proposal would meet the criteria.

Klempel asked when they had acquired the property. She asked if they were familiar with wildland-urban interfacing (WUI). She explained that it would be prudent, for any type of building in the area, to have a clearing where a fire truck could get to the area without the interference of trees. She discussed the need to reduce the fuels.

Kauffman said they were aware of fire danger and spoke about clearing they had done in the area. They had started the process of thinning the area in the 1970's and have continue to do so. He was a firm believer in thinning and underscoring. He said the structure would only be visible for less than a quarter mile and people wouldn't see it.

BOARD QUESTIONS

7:13 PM

Noble spoke about height variances in the past that the board has either approved or denied. The board had to take into consideration all the aspects when they review an application. He agreed that this was a novel concept, with some neat character to it, but he reminded the board that the variance could not be granted unless it met all 9 of the criteria. At this time, all nine were negative findings.

MAIN MOTION TO ADOPT F.O.F.

(FZV-21-05)

7:15 PM

Leichti made a motion, seconded by Klempel, to accept Staff Report FZV-21-05 as Findings-of-Fact.

ROLL CALL TO ADOPT F.O.F.

(FZV-21-05)

7:15 PM

Motion passed unanimously on a roll call vote.

MOTION TO DENY (FZV-21-05)

7:16 PM

Leichti made a motion, seconded by Klempel, to deny FZV-21-05.

ROLL CALL TO DENY (FZV-21-05)

7:16 PM

Motion passed unanimously on a roll call vote.

OLD BUSINESS
7:18 PM

Netteberg asked for staff's comment on zoning vs. unzoned. Mack explained that when zoning was put in place, people had the option to opt out of the Hwy 93 Zoning. Kauffman said that zoning came after he had owned the property and they would have never opted in for zoning had there been an option. Mack explained that it was zoned under Whitefish and he could not speak for them. It was a part of the Whitefish Donut. Kauffman said that if they had been zoned under the donut then that was unfair because he was zoned by people that he could not vote for.

NEW BUSINESS
7:21 PM


Mack brought up that last month the board reviewed a short term rental. There had been discussion on whether or not short term rentals were considered residential vs. commercial use. Mack had printed off the Montana Code Annotate (MCA) which addressed such issue. The board and staff discussed at length the criteria and future files that will be reviewed.

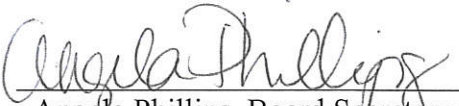
Noble said that there were a lot of other factors that went into the previously mentioned decision; including neighborhood, traffic, etc. Mack said the problem was that they had approved 50 short term rentals, with the same restrictions, and if the BOA turned 1 down because of traffic, then they would have to deny them all. It put the Planning Office in a bind.

Klempel asked if it was the legislature that changed the regulations. She felt that something needed to be done. Mack agreed. Klempel read it as that there were no restrictions and she did not feel that it was fair to neighboring properties. Mack said they had more short term rentals than ever. People were getting upset. Klempel said they needed to do something and Planning Board should do their homework on this topic because of the housing crisis. They discussed, at great length, what other cities have done to address the short term rentals issues and housing crisis.

ADJOURNMENT
7:30 PM

The meeting was adjourned at approximately 8:28 pm on a motion by Klempel. The next meeting will be held at 6:00 pm on September 7, 2021.


Cal Dyck, Chairman
Co-Chair


Angela Phillips, Board Secretary

APPROVED AS SUBMITTED/CORRECTED 9/7/2021